



Kansas County & District Attorneys Association

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From: Kim T Parker, Prosecutor Coordinator:  
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Date: February 19, 202017  
Re: Proponent Testimony for Senate Bill 355

Good Morning Chairman Wilborn and Members of the Committee.

Thank you for giving me the opportunity to propose the adoption of SB355. The Kansas law currently allows a court to order the mental, psychiatric or psychological testing of a victim of sexual abuse upon the request of a defendant who is charged with the sexual assault of the victim. This court rule in Kansas allowing the psychiatric or psychological examination of a witness stems from a 1979 Kansas Supreme Court case State v. Gregg that relied on outdated and false understandings of criminal sexual abuse, assault and rape and gender biased notions about female sexual assault victims. In the Gregg case, the adult defendant was charged with the sexual assault of an 8-year-old girl. The 8-year-old victim had stated that defendant forced her to commit fellatio with him. The defendant's version was that he was high on drugs and liquor and that the little girl had, on her own initiative, committed the act before he was aware of what was occurring.

In deciding whether Kansas Courts could order and require a victim of a sexual attack they relied on reasoning used to decide a 1966 California case, Ballard v. Superior Court. In Ballard, a

physician charged with the rape of a patient asked the trial court to order the victim of the rape to undergo psychiatric examination for the purpose of determining whether her mental and emotional condition affected her veracity or truthfulness. The charged defendant and his defense attorney suggested that psychiatric interviews of a victim in a sex case, were necessary because a woman or girl may falsely accuse a person of a sex crime because of a mental condition that transforms into fantasy, a wishful biological urge. Also, that a sexual assault accusation may flow from an aggressive tendency directed to the person accused or from a childish desire for notoriety. The reasoning in the Ballard case was based on a legal treatise written in 1940 that claimed that “ No judge should ever let a sex-offense charge go to the jury unless the female complainant's social history and mental makeup have been examined and testified to by a qualified physician.” The author of the treatise, Professor Wigmore, was concerned that a victim of a sexual assault may suffer from an emotional condition inducing her belief that she has been subjected to a sexual offense and that there is a danger of psychotically induced accusations of sexual assault.

Fast forward 1940 to 2020, eighty years later we know this thinking is archaic, biased and unsupported by any valid evidence. In fact, in the Gregg case even the Kansas Supreme Court recognized that the defense motion to require the 8-year-old to submit to such an exam was merely a fishing expedition and was not required. Unfortunately, their ruling left open a door to allow courts to continue to order a mental exam. We ask that you close that door because it is extremely invasive and because there are no known mental examinations that determine the truthfulness of a report of sexual assault. The current state of the law only serves to further unfairly brand and silence those who are among the most vulnerable and invaded victims. This type of court ordered evaluation is never applied to any other type of victim and is a shameful

reminder of society's failure to acknowledge the reality and prevalence of crimes of sexual assault.

Most importantly it serves no purpose but to further harass and insult a victim of a sexual assault since psychological test, mental exam or interview can determine the truthfulness of a victim's report. Sexual assault female victims have a right to be treated as all other victims coming in the courts. They should have equal access to justice. The veracity of a sexual assault victim should be subject to the same tests as all other victims, solid investigations, a prosecutor's careful review of the facts, through cross examination and the determination by a court or jury as to the credibility of the evidence and testimony.

We urge you to adopt the needed provision of SB 355.

Respectfully submitted

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